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June 4, 1992

BY MESSENGER

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Engineering & Technology Docket No. 92-9

Dear Ms. Searcy:

American Personal Communications ("APC"), pursuant to Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2) (1991), hereby notifies the Commission that on Monday, June 1, 1992, APC provided to the FCC's staff a copy of written testimony being filed by Wayne N. Schelle prior to his scheduled June 3, 1992 appearance before the Senate Communications Subcommittee. A copy of the testimony as provided to the FCC's staff is attached to this notice.

Please direct any inquiries concerning this matter to the undersigned.

Very truly yours,

Kurt A. Wimmer

* MEMBER OF THE BARS OF KANSAS AND TEXAS
NOT ADMITTED IN THE DISTRICT OF COLUMBIA

SUMMARY OF TESTIMONY OF WAYNE N. SCHELLE
CHAIRMAN, AMERICAN PERSONAL COMMUNICATIONS

SENATE COMMUNICATIONS SUBCOMMITTEE
JUNE 3, 1992

The Federal Communications Commission should be permitted to consider fully and flexibly implementing new technologies such as personal communications services, or "PCS," in the 2 GHz band. U.S. industry is poised to implement PCS. And it can do so without harming the legitimate interests of incumbent users of the 2 GHz band. Legislative intervention at this early point can only handicap American industry and keep the United States from claiming its rightful position as the world leader in this important new technology.

Unless its development is hamstrung by inappropriate and unnecessary legislation, PCS promises to serve 30 million Americans by the end of this decade and will be a $195 billion international industry by the year 2010. PCS will create thousands of jobs for American workers. In addition, PCS will save consumers as much as $5 billion per year as soon as it is implemented just by providing price competition to other telecommunications services. Our major industrial competitors have recognized the enormous potential of this service and already have allocated spectrum for PCS (and, in many cases, have introduced service as well).

These countries could far outdistance the United States in this important new technology, because their governments are effectively clearing 2 GHz bands of incumbent users. In some countries of the Far East, 2 GHz microwave users simply have been ordered to vacate the band by a date certain -- at their own cost -- in the imminent future. In the European Community, 2 GHz microwave users have either been ordered out of the band or given "secondary" status to PCS as of last year.

Neither APC nor Telocator endorses such drastic measures (and these extreme measures are not even being considered by the FCC).

In the first place, very few incumbent microwave users would need to relocate to accommodate PCS in this country. Sufficient spectrum exists to implement PCS now, in the top 11 markets in the United States. Much more vacant spectrum exists in smaller communities and rural areas.

In the second place, PCS licensees would be required to bear the full cost of relocation of an incumbent microwave user to other, equally suitable, frequencies. Any incumbent licensee that would need to move would be required to relocate

only if suitable, reliable alternative frequencies exist and if the PCS licensee needing the frequencies occupied by that incumbent commits to pay the full costs of relocating that incumbent's facilities. Suitable frequencies do, in fact, exist and are being used by utilities now.

Finally, any new service the FCC authorizes in the 1.85-1.99 GHz band will be required to provide interference protection to existing microwave users.

The FCC has issued no rules requiring any microwave user to vacate the 2 GHz band or even to share the 2 GHz band with any new technology. The process is just now beginning and a final decision will not be reached by the FCC for many months. The FCC has initiated formal discussions with the National Telecommunications and Information Administration to investigate using government bands for private microwave use. The FCC has issued a formal policy permitting incumbent microwave users to modify existing paths and even add entirely new paths during the course of the FCC's rule making proceeding. In a gesture that may be unique, it has authored a letter to the Chairman of this Committee signed by all five members of the Commission that gives effective and appropriate reassurance to microwave incumbents. Throughout the course of this proceeding, the FCC has shown and continues to show strong sensitivity toward the important and legitimate needs of incumbent microwave users. It should be permitted to continue to do so.

TESTIMONY OF WAYNE N. SCHELLE
CHAIRMAN, AMERICAN PERSONAL COMMUNICATIONS

SENATE COMMUNICATIONS SUBCOMMITTEE
JUNE 3, 1992

I am pleased to appear before you today to discuss the importance of permitting the Federal Communications Commission to consider fully and flexibly implementing new technologies such as personal communications services, or "PCS," in the 2 GHz band. As chairman of American Personal Communications ("APC"), a partnership with The Washington Post Company, a company that has been conducting experimental PCS operations right here in Washington/Baltimore for almost two years,[1/] as chairman of the major PCS industry group -- the Telocator PCS section, the membership of which includes more than 80 of the top communications companies in the United States[2/] -- and as someone who helped launch cellular service

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[1/] In 1989, APC applied for the first PCS experimental authorization in the United States. It placed into service an experimental second-generation cordless telephone ("CT-2") system on the air with more than 200 subscribers in Washington/Baltimore in November 1991, after testing and constructing the system for several months. Beginning in April 1991, APC began signal propagation analysis in the 1.85-1.99 GHz band. APC has since made more than 200,000 measurements in this band, and will place into service an experimental PCS system at 1.85-1.99 GHz in September 1992.

[2/] Telocator also has filed extensive written testimony for the hearing record, to which I hope the Subcommittee will give close attention.

in this country,[3/] I can tell you without question or qualification that U.S. industry is poised to implement PCS. And it can do so without harming the legitimate interests of incumbent users of the 2 GHz band. Legislative intervention at this early point can only handicap American industry and keep the United States from claiming its rightful position as the world leader in this important new technology.

The United States has a wonderful but fleeting opportunity to lead the world in implementing and exporting PCS equipment and services. Unless its development is hamstrung by inappropriate and unnecessary legislation, PCS promises to serve 30 million Americans by the end of this decade and will be a $195 billion international industry by the year 2010. PCS will create thousands of jobs for American workers. In addition, the FCC has told President Bush that PCS will save consumers as much as $5 billion per year as soon as it is implemented just by providing price competition to other telecommunications services. Reliable analyses place the economic cost of delaying the implementation of cellular service at $86 billion; our economy should not suffer parallel losses by a delay in implementing PCS.

Our major industrial competitors in the European Community and the Far East have recognized the enormous

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[3/] APC's principals initiated the first experimental nonwireline cellular system in the United States in the early 1980s and put into operation the first nonwireline cellular system in the U.S., both in the Washington, D.C./Baltimore, Maryland area.

potential of this service and already have allocated spectrum for PCS (and, in many cases, have introduced service as well). These countries could far outdistance the United States in this important new technology, because their governments are effectively clearing 2 GHz bands of incumbent users while we are threatened by a stalemate that U.S. incumbent users seek to foster. The United States is absolutely unique in its degree of sensitivity to the needs of incumbent users. In some countries of the Far East, 2 GHz microwave users simply have been ordered to vacate the band by a date certain -- at their own cost -- in the imminent future. In the United Kingdom and each member country of the European Community, 2 GHz microwave users have either been ordered out of the band or given "secondary" status to PCS as of last year. Even military users of the 2 GHz band have been required to vacate in some EC countries.

Neither APC nor Telocator endorses such drastic measures (and these extreme measures are not even being considered by the FCC). In the first place, very few incumbent microwave users would need to relocate to accommodate PCS in this country. APC's Frequency Agile Sharing Technology ("FAST") system permits PCS licensees to introduce PCS to American consumers utilizing the vast amount of vacant spectrum that currently exists in the 2 GHz band. APC has analyzed every existing or proposed microwave path in the 2 GHz band in the top 11 markets in the United States --

New York, Los Angeles, Chicago, Washington, Philadelphia, Detroit, Boston, Dallas, Houston, Miami, and San Francisco. APC found that between 50 and 100 MHz of spectrum in the 2 GHz band currently is available for PCS operations in 96.3 percent of locations in the top 11 United States markets without relocation of, or interference to, incumbent users. (As a comparison, each cellular licensee has only 25 MHz of spectrum in each market.)

In smaller cities and rural areas, even more vacant spectrum is available -- in Seattle, Washington, for example, from 50 to 100 MHz of spectrum is vacant at 100 percent of locations and from 100-140 MHz of spectrum is vacant in 89.6 of all locations. In Columbia, South Carolina, 50 to 100 MHz of spectrum is vacant in 99.7 percent of locations and from 100-140 MHz of spectrum is vacant in 94.2 percent of all locations. In Charleston, South Carolina, 50 to 100 MHz of spectrum is vacant in 98.8 percent of locations and from 100-140 MHz of spectrum is vacant in 81.9 percent of locations. In Honolulu, 50 to 100 MHz of spectrum is vacant in 100 percent of locations and from 100-140 MHz of spectrum is vacant in 94.6 percent of all locations. Incumbent microwave users in these areas almost certainly would never be required to relocate to accommodate PCS.

In the second place, PCS licensees would be required to bear the full cost of relocation of an incumbent microwave user to other, equally suitable, frequencies. Any incumbent

licensee that would need to move would be required to relocate only if suitable, reliable alternative frequencies exist and if the PCS licensee needing the frequencies occupied by that incumbent commits to pay the full costs of relocating that incumbent's facilities. Suitable frequencies do, in fact, exist and are used by utilities now -- in this area, for example, the Potomac Electric Power Company uses the 6 GHz band for 26 of its 32 microwave paths and only has three paths in the 2 GHz band; we also understand that the Tennessee Valley Authority uses the 8 GHz band for 70 percent of its microwave paths. (In addition, alternative media, such as fiber optic transmission systems, are being implemented by many forward-thinking utilities already.) If, however, no suitable alternative frequencies can be located in the particular case, the microwave user could remain in the 2 GHz band indefinitely. The Utilities Telecommunications Council ("UTC") has indicated its support for a similar approach in its ex parte filings at the FCC, and the FCC has indicated its support for this type of approach as well.

Utilities and others that operate microwave paths, in fact, will not resist being asked to move to different frequency bands, where the cost of brand new equipment will be borne by new PCS licensees. For example, APC's experience with Baltimore Gas & Electric Company, a major utility, demonstrates that at least some utilities realize that PCS is not a threat but a significant potential business opportunity

-- in fact, APC and BG&E are starting a joint venture to test utility applications for PCS. Other PCS entrepreneurs have had similar success in other markets. Voluntary relocation will permit a utility's microwave equipment to be replaced with new facilities at no cost to the utility itself, and will facilitate efforts by utilities to upgrade to more spectrum-efficient digital transmission or even fiber optic capability.

Finally, any new service the FCC authorizes in the 1.85-1.99 GHz band will be required to provide interference protection to existing microwave users. Bear in mind that all existing microwave users are sharing the 2 GHz band right now -- with <u>other</u> microwave users. New microwave users are required, of course, to protect existing users from interference. APC has crafted and proposed interference protection rules based on its exhaustive spectrum research and its more than 200,000 PCS measurements in the 2 GHz band. Its proposals would provide incumbent users with the same degree of interference protection to which they are accustomed from other microwave users. Without question, the FCC will not authorize any new service in the 2 GHz band without establishing strict rules to protect existing users from harmful interference. APC's research and its groundbreaking technological developments prove that sharing the 2 GHz band between microwave users and PCS licensees will work.

The FCC's new technologies proposal was released in January 1992, and its PCS proposal may be released this

summer. The FCC has issued no rules requiring any microwave user to vacate the 2 GHz band or even to share the 2 GHz band with any new technology. In fact, the very first round of public comments will be due only at the end of this week. A final decision will not be reached by the FCC for many months. Already, incumbent users and their supporters have filed four petitions at the FCC to halt or broaden the scope of the new technologies docket; the FCC now is accepting comments on UTC's petition to modify technical rules in higher frequency bands to facilitate private microwave relocation to those bands. The FCC has initiated formal discussions with the National Telecommunications and Information Administration -- as UTC, the railroads, and the petroleum industry have demanded -- to investigate using government bands for private microwave use. The FCC has issued a formal policy permitting incumbent microwave users to modify existing paths and even add entirely new paths during the course of the FCC's rule making proceeding. In a very special, if not unique, gesture, it has even authored a letter to the Chairman of this Committee signed by all five members of the Commission that gives effective and appropriate reassurance to microwave incumbents. Throughout the course of this proceeding, the FCC has shown and continues to show strong sensitivity toward the important and legitimate needs of incumbent microwave users.

Why, then, do existing users insist on legislation that would prevent the FCC from weighing the appropriate

interests as its rule making proceedings go forward? We think it is simply good government for the expert regulatory agency in the first instance to attempt to resolve the complex issues surrounding the implementation of new communications technologies. Congressional oversight and concern are appropriate and desirable; we believe this hearing should be helpful, for example. Should the FCC fail to weigh appropriately the important and legitimate interests of incumbent users -- and we believe wholeheartedly that the FCC will succeed in accommodating all the parties' interests in this matter -- there will be time enough for legislative oversight and, if necessary, a legislative response. Although the principles described above are straightforward, they call for handling by the administrative agency that is expert in this area. For example, specific new technologies, such as wireless data transmission, may present unique technical questions; interference and sharing criteria are inherently complex technical matters; and cost-reimbursement issues require careful balancing to provide a level playing field.

The Subcommittee also should take a good, hard look at the mischief the language being proposed by utility incumbents could cause. First, language has been proposed that states that "frequencies assigned" to a utility "shall not be withdrawn." My lawyers tell me that this language creates a perpetual property right in spectrum assigned to utilities, contrary nearly 60 years of experience under the

Communications Act. That language also would entirely undermine the system of negotiation between incumbent users and new licensees that APC -- and UTC, for that matter -- has proposed. Second, the proposed language applies not only to 2 GHz frequencies, but to any frequencies used by a utility. Our research, at least in this area, shows that utilities actually use the 6 GHz frequency bands more than they use the 2 GHz band. Surely there is no reason to grant utilities grandfathered property rights in these frequencies, which are not being considered for new technologies. Third, if this amendment is enacted into law, the FCC could not "withdraw" frequencies used by a utility for any reason -- the FCC could not modify a license for legitimate technical reasons, could not deny license renewal for any reason, and could not revoke a license even for blatant violations of law by the licensee.

PCS will be a boon to the United States manufacturing and services sectors of our economy and to our competitiveness in world markets. The FCC is taking a measured approach to implementing new technologies, and is more sensitive to the interests of incumbent users than any other regulatory agency in the world. It should be permitted to continue its efforts to weigh the legitimate needs of incumbent microwave users and new technologies in its pending docket. Any legislative intervention at this early juncture would be unnecessary and unwise, particularly since the FCC is so clearly sensitive to the needs of microwave incumbents and

since PCS can be implemented without any harm to existing users even in those very limited cases where relocation will be necessary.

Thank you.